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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*,

Debtors.

Chapter 11 Case No.

08-13555 (JMP)

(Jointly Administered)

In re

LEHMAN BROTHERS INC.,

Debtor.

SIPA Proceeding Case No.

08-01420 (JMP)

**Affidavit of Todd Thomas in Support of Barclays' Motion To Compel Production of  
Documents From the Trustee and the Committee Based on Privilege Waiver**

W. Todd Thomas, being duly sworn, declares under penalty of perjury that the  
following statements are true:

1. I am a partner at the law firm Boies, Schiller & Flexner LLP, attorneys for  
Barclays Capital, Inc. ("Barclays"). I submit this affidavit in support of Barclays' Motion  
to Compel Production of Documents From the Trustee and the Committee Based on  
Privilege Waiver.

2. In an effort to resolve this dispute, I engaged in a number of written and oral communications with attorneys for the Trustee in the Securities Investor Act proceedings ("Trustee") and the Official Committee of Unsecured Creditors ("Committee") regarding whether the Trustee and the Committee have waived privilege by filing their Rule 60 motions. The parties could not reach an agreement.

3. On November 24, 2009, the parties held a conference before the Court by telephone regarding this discovery dispute. The parties advised the Court that they had engaged in a good-faith effort to resolve by agreement the issues raised in this motion, as required by Local Rule 7007-1(a), but they had been unable to reach an agreement and did not feel that further discussions would be likely to resolve this dispute. The Court instructed the parties to file their motions and attend a hearing scheduled for December 10, 2009.

4. Attached hereto as Exhibit 1 is a true and correct copy of the Privilege Agreement entered into on October 14, 2009, between Lehman Brothers Holding, Inc. ("LBHI") and Barclays.

5. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration submitted by James Kobak in support of the Trustee's Rule 60 Motion.

6. Attached hereto as Exhibit 3 are true and correct copies of letters sent by me to Erica Taggart, counsel for the Committee, and William Maguire, counsel for the Trustee, on November 4 and 10, respectively.

7. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the transcript of the deposition of James Seery, taken on September 3, 2009.

8. Attached hereto as Exhibit 5 is a true and correct copy of excerpts of the transcript of this Court's hearing on December 22, 2008.

9. Attached hereto as Exhibit 6 are true and correct copies of Barclays' First and Second Requests for the Production of Documents served on the Trustee and the Committee.


10. Attached hereto as Exhibit 7 are true and correct copies of sample redacted documents provided to Barclays by the Committee.

I declare under penalty of perjury that the foregoing is true and correct.



W. TODD THOMAS

Sworn to before me  
This 17 day of December, 2009

  
Notary Public